

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL FRANKLIN GARNER,

Petitioner,

vs.

MAGGIE MILLER-STOUT,

Respondent.

NO: 12-CV-0532-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DIRECTING TRANSFER OF ACTION
TO NINTH CIRCUIT COURT OF
APPEALS

Magistrate Judge Hutton filed a Report and Recommendation on September 17, 2012, recommending that Mr. Garner's third habeas corpus petition challenging his 2006 Spokane County jury conviction for First Degree Premeditated Murder be transferred to the Ninth Circuit Court of Appeals as a second or successive petition. ECF No. 6. There being no objections, the Court **ADOPTS** the Report and Recommendation.

The Court notes that on August 7, 2012, the Ninth Circuit denied Mr. Garner's application for authorization to file a second or successive 28 U.S.C. § 22454 habeas corpus petition in the district court. *See* Ninth Circuit Cause number

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1 12-71497. Although it does not appear to be in the interests of judicial efficiency
2 to once again transfer a habeas petition from Mr. Garner to the Ninth Circuit Court
3 of Appeals, Ninth Circuit Rule 22-3(a) seems to compel this. Accordingly, **IT IS**
4 **ORDERED** this case is **TRANSFERRED** to the Ninth Circuit Court of Appeals,
5 pursuant to Ninth Circuit Rule 22-3(a).

6 Petitioner is advised this transfer does not of itself constitute compliance
7 with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an application for
8 leave to proceed in the Court of Appeals and make the showing required by §
9 2244(b)(2). Petitioner is directed to consult this statute and Ninth Circuit Rule 22-
10 3 for further information.

11 **IT IS SO ORDERED.** The District Court Executive is directed to transfer
12 all original documents to the Ninth Circuit Court of Appeals. The District Court
13 Executive shall, however, retain a copy of the petition and of this Order in the file.
14 The District Court Executive is further directed to enter this Order, forward a copy
15 to Petitioner, and close the file.

16 **DATED** this 22nd day of October, 2012.

17 *s/ Thomas O. Rice*

18 THOMAS O. RICE

19 United States District Judge

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